

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LOTU TATAGAMATAU OSOTONU,

Defendant and Appellant.

A155920

(Napa County
Super. Ct. No. CR182562)

Lotu Tatagamatau Osotonu appeals from a judgment of conviction and sentence imposed after he entered a no contest plea to multiple counts, including possession of a controlled substance while armed with a firearm (Pen. Code, § 11370.1, subd. (a)) and possession of ammunition by a prohibited person (§ 30305, subd. (a)).¹ Osotonu contends the court erred by imposing a concurrent sentence for the possession of ammunition conviction rather than staying the sentence under section 654. We will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

An information charged Osotonu in seven counts, as follows: felon in possession of a firearm (§ 29800, subd. (b)); carrying a loaded firearm (§ 25850, subd. (c)(4)); possession of a concealed firearm (§ 25400, subd. (c)(4)); possession of ammunition by a prohibited person (§ 30305, subd. (a)); possession of methamphetamine with a firearm (Health & Saf. Code, § 11370.1, subd. (a)); misdemeanor possession of hydrocodone

¹ Except where otherwise indicated, all statutory references are to the Penal Code.

(Health & Saf. Code, § 11350, subd. (a)); and misdemeanor possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). The information alleged one prior strike conviction (§ 667, subd. (b)–(i)) and several prior prison-term commitments (§ 667.5, subd. (b)).

At the preliminary hearing, the court admitted evidence that Osotonu was a felon at the time of the alleged offense. Napa County Deputy Sheriff Daniel Lichau testified that he observed Osotonu inside a vehicle whose ignition wires were hanging from the steering console. Osotonu appeared nervous as the officer approached. After a pat search, the officer seized from Osotonu’s person a .25 caliber pistol loaded with two rounds. In a search of the vehicle, the officer recovered from the cab of the car a plastic bag containing 10 additional rounds of “.25 auto.” Ten hydrocodone pills and 1.8 grams of methamphetamine were found in Osotonu’s pants pocket.

Pursuant to a negotiated disposition, Osotonu entered an open plea of no contest to counts one through seven and admitted a prior strike conviction.

The court sentenced Osotonu to state prison for six years, based on the middle term of three years on the count five conviction for possession of a controlled substance while armed, doubled due to the prior strike. The court stayed sentence on counts one, two, and three pursuant to section 654, and ordered count four (possession of ammunition by prohibited person) to be served concurrent to count five because the ammunition was found separate from the firearm.

This appeal followed.

II. DISCUSSION

Osotonu contends the court should have stayed his sentence for possession of ammunition by a prohibited person under section 654 rather than imposing it concurrent to his sentence for possession of methamphetamine while armed.

Section 654 provides in relevant part: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

The purpose of section 654 “is to ensure that a defendant’s punishment will be commensurate with his culpability.” (*People v. Correa* (2012) 54 Cal.4th 331, 341.) To that end, the statute prohibits courts from imposing multiple punishment for the same act or omission. (*People v. Corpening* (2016) 2 Cal.5th 307, 311.) And “[s]ection 654 applies not only where there was but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction.” (*People v. Hicks* (1993) 6 Cal.4th 784, 791.) “Whether a course of conduct is indivisible depends upon the intent and objective of the actor.” (*People v. Perez* (1979) 23 Cal.3d 545, 551.)

Thus, “[w]e first consider if the different crimes were completed by a ‘single physical act.’ [Citation.] If so, the defendant may not be punished more than once for that act. Only if we conclude that the case involves more than a single act—i.e., a course of conduct—do we then consider whether that course of conduct reflects a single ‘“intent and objective” ’ or multiple intents and objectives.” (*Corpening, supra*, 2 Cal.5th at p. 311.) We review a finding that a defendant harbored multiple intents and objectives for substantial evidence. (*People v. Dowdell* (2014) 227 Cal.App.4th 1388, 1414.)

Here, Osotonu possessed a controlled substance while armed with a loaded firearm on his person and, separately, possessed a bag of ammunition while a felon. As Osotonu acknowledges, these acts constituted two different physical acts for purposes of section 654.

Furthermore, substantial evidence supports the conclusion that the two acts did not reflect a single intent and objective. Although the ammunition caliber matched the caliber of the firearm, the ammunition was held separately from the firearm and would have fit any other .25 caliber weapon. Moreover, the objective of possessing a controlled substance while armed is different than the objective of possessing ammunition as a felon. Section 654 did not preclude sentencing for both convictions.

Osotonu argues that he possessed both the loaded firearm on his person and the separate bag of ammunition for the purpose of protecting himself and his companion. He points to a line in the probation officer’s report that he “admitted he purchased the

firearm for protection a week prior for \$100.00 and got the ammunition a few days later.” However, the court was not obligated to believe this unsworn second-hand statement, especially since Osotonu had originally told the police something else—that he had obtained the firearm for his companion and it belonged to her. And even if Osotonu’s more recent statement about his purpose for buying the gun was given credence, he did not specify his intent and objective when he was *possessing* the loaded firearm and separate bag of ammunition at the time of his arrest. It was not unreasonable for the court to conclude that Osotonu’s possession of additional ammunition outside of the partially-loaded firearm reflected a separate intent and objective.

Osotonu’s reliance on *People v. Lopez* (2004) 119 Cal.App.4th 132 is misplaced. There, the defendant had been convicted of unlawful possession of a firearm and unlawful possession of ammunition. Because *all* the ammunition possessed by the defendant was loaded into the firearm, the possession of the gun and possession of the ammunition constituted an indivisible course of conduct. (*Id.* at pp. 137–138; see *People v. Sok* (2010) 181 Cal.App.4th 88, 100 [court should have stayed sentence for unlawful possession of ammunition under § 654 because the ammunition was loaded into the firearm or had been fired from it].) In the case before us, not all the ammunition was loaded into the firearm.

Moreover, the court’s imposition of concurrent sentences for possessing contraband with a loaded firearm, and for separately possessing additional ammunition as a felon, is commensurate with Osotonu’s culpability. It is one thing for a person to be armed while possessing drugs; it is additionally culpable for the person to possess, as a *felon*, ammunition in *addition* to what he had loaded into the firearm.

Osotonu fails to demonstrate error.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BURNS, J.